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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85- 5260

ORIGINAL

KENNETH DALE LANIER,

PETITIONER,

V. 85

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

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15.0

QUESTION PRESENTED

IS A CONFESSION OBTAINED AFTER AN ILLEGAL ARREST, ALTHOUGH VOLUNTARY UNDER THE FIFTH AMENDMENT, ADMISSIBLE INTO EVIDENCE WHERE THERE IS NO SHOWING BY THE STATE THAT INTERVENING EVENTS OCCURRED WHICH SEVERED THE CAUSAL CONNECTION BETWEEN THE ILLEGAL ARREST AND THE CONFESSION SO THAT THE CONFESSION IS SUFFICIENTLY AN ACT OF FREE WILL TO PURGE THE PRIMARY TAIN?

TABLE OF CONTENTS

QUESTION PRESENTED.....	1
TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES.....	3
CITATION TO OPINION BELOW.....	4
JURISDICTION.....	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	5
STATEMENT OF THE CASE.....	5
HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW..	6
REASONS FOR GRANTING THE WRIT.....	7
CONCLUSION.....	9

APPENDIX

Opinion of the South Carolina Court of Appeals in <u>State v. Lanier</u> , Mem. Op. No. 85-MO-003 (Ct.App. S.C. 1985)....	A-1
Petition for Rehearing and Order denying same.....	A-3 - A-7
Petition for Writ of Certiorari to South Carolina Supreme Court and Order denying same.....	A-8-16
Counsel's objection to statement of Petitioner from Trial Transcript.....	A-17-A-21

TABLE OF AUTHORITIES

CASES	Page
<u>Brown v. Illinois</u> , 422 U.S. 590 (1975)	7, 8, 9
<u>Dunaway v. New York</u> , 442 U.S. 200 (1979)	7, 8, 9
<u>Michigan v. Tucker</u> , 417 U.S. 433 (1974)	8
<u>Oregon v. Elstad</u> , ___ U.S. ___, 105 S.Ct. 1285 (1985)	7, 8
<u>Payton v. New York</u> , 445 U.S. 573 (1980)	6
<u>State v. Funchess</u> , 255 S.C. 385, 179 S.E.2d 25, cert. denied, 404 U.S. 915 (1971)	6
<u>State v. Plath</u> , 277 S.C. 126, 284 S.E.2d 221 (1981)	6
<u>Steagald v. United States</u> , 451 U.S. 204 (1981)	6
<u>Taylor v. Alabama</u> , 457 U.S. 687 (1982)	7, 8, 9
<u>Wong Sun v. United States</u> , 371 U.S. 471 (1963)	8
STATUTES	
28 U.S.C. §1257(3)	3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

NO. 85- _____

KENNETH DALE LANIER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioner Kenneth Dale Lanier would respectfully request of this Court the issuance of a Writ of Certiorari to review the judgment of the Supreme Court of South Carolina regarding the above-mentioned question presented.

CITATION TO OPINION BELOW

The opinion of the South Carolina Court of Appeals, State v. Lanier, (S.C. Ct. of Appeals Opinion No. 85-MO-003, Filed February 14, 1985) has not yet been reported. It is reproduced in the Appendix to this petition at A-1 to A-3. The Order of the South Carolina Court of Appeals denying rehearing of Petitioner's Appeal and the Petition for Writ of Certiorari and Order denying same is likewise unreported but reproduced herein at A-3 to A-16.

JURISDICTION

The judgment of the South Carolina Court of

Appeals was entered February 14, 1985. A timely Petition for Rehearing was filed and denied April 5, 1985. Petitioner timely filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on May 6, 1985. This Petition was denied by the South Carolina Supreme Court in an Order dated June 27, 1985. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257 (3), Petitioner having asserted below and herein a deprivation of rights guaranteed him under the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution which provides in part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....

It also involves the Fourteenth Amendment to the United States Constitution which provides in part:

No State shall ... deprive any person of life, liberty of property without due process of law....

STATEMENT OF THE CASE

Petitioner Kenneth Dale Lanier was convicted of armed robbery and sentenced to imprisonment within the South Carolina Department of Corrections for a period of twenty (20) years.

In its opinion in Petitioner's case, the South Carolina Court of Appeals held that a statement given to police by Petitioner was admissible into evidence because the statement was given voluntarily, without discussing the legality of the arrest that preceded the statement and without regard to any intervening circumstances which may have severed the connection between the illegal arrest and the statement. (See App. p.1 - p.2).

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW:

Trial counsel for the Petitioner objected to the admissibility of the confession on the ground that Appellant's arrest was illegal under Payton v. New York, 445 U.S. 573 (1980). The trial court, using an improper "probable cause" analysis, ruled the statement was admissible at Petitioner's trial. (App. p.17, line 14 - p.21, line 4).

On appeal to the State Supreme Court, Petitioner argued that the confession was the product of an illegal arrest and should have been suppressed under the fruit of the poisonous tree doctrine. Petitioner's basis for this argument was that he was arrested in his home without a warrant in the absence of exigent circumstances and that the arrest was therefore illegal under the Fourth and Fourteenth Amendments and the holding of this Court in Steagald v. United States, 451 U.S. 204 (1981). and Payton v. New York, supra.

In treating the issue on appeal, the South Carolina Court of Appeals stated:

Assuming, without deciding, that Lanier's arrest was illegal, we nevertheless hold his confession was admissible. A confession made while the accused is in custody before any warrant for his arrest has been issued is not per se inadmissible. State v. Funchess, 255 S.C. 385, 179 S.E.2d 25, cert. denied, 404 U.S. 915, 92 S. Ct. 236, 30 L.Ed.2d 189 (1971). Voluntariness remains as the test of admissibility. Id. Even if the arrest was illegal, the confession will be admissible if it is freely and voluntarily given. State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). Since Lanier does not claim his confession was not voluntary, his argument that the confession was inadmissible is without merit. (App. p.2).

Petitioner's conviction and sentence were affirmed by the Court of Appeals. In a timely Petition for Rehearing, the Petitioner requested the Court to reconsider its holding in this case on the grounds that the State Court cases relied on in its opinion, State v. Funchess and State v. Plath, both supra, were inconsistent with later

precedents of the United States Supreme Court. Without discussion, the South Carolina Court of Appeals denied Petitioner's request for rehearing.

Petitioner then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on the same grounds as his Petition for Rehearing. The South Carolina Supreme Court also denied the Petition without discussion. (App. p. A-8 - p. A-16).

REASONS FOR GRANTING THE WRIT

This Court has consistently held that the fact that a confession may be "voluntary" for purposes of the Fifth Amendment is not by itself sufficient to purge the taint of an illegal arrest. A finding of voluntariness for purposes of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis. The test for admissibility of a confession following a violation of the Fourth Amendment is whether intervening events break the causal connection between the illegal arrest and the confession so that the confession is sufficiently an act of free will to purge the primary taint. Brown v. Illinois, 422 U.S. 590 (1975); Dunaway v. New York, 442 U.S. 200 (1979); Taylor v. Alabama, 457 U.S. 687 (1982); all cited favorably in Oregon v. Elstad, ___ U.S. ___, 105 S. Ct. 1285 at 1292 (1985).

The South Carolina Court of Appeals relied in its opinion on a 1971 ~~State~~ precedent, State v. Funchess, *supra*, in which the South Carolina Supreme Court ruled that a confession obtained after an allegedly illegal arrest was admissible as long as the confession was voluntarily given within Fifth Amendment parameters (i.e., proper Miranda warnings were given and accused voluntarily waived his Fifth Amendment rights). As noted by the South Carolina Supreme Court in the Funchess decision, in 1971 there was a split of authority with reference to whether a confession obtained

after an illegal arrest was inadmissible in evidence under the holding of Wong Son v. United States, 371 U.S. 471 (1963).

We submit that the split of authority referred to in Funchess was squarely decided by the United States Supreme Court in Brown v. Illinois, Dunaway v. New York, and Taylor v. Alabama, *supra*. This doctrine has recently been reiterated in Oregon v. Elstad, *supra*. Thus, the precedential value of Funchess has been destroyed under the supremacy clause found in Article VI, §2 of the United States Constitution.

In State v. Plath, *supra*, the South Carolina Supreme Court once again held, citing State v. Funchess, that an illegal arrest would not render a subsequent confession inadmissible if the confession was given freely and voluntarily under the Fifth Amendment.

It is important to note that the Appellant in Plath did not seek to have his confession ruled inadmissible because he was arrested illegally, but contended that the indictment against him should have been quashed because the State had granted him immunity in exchange for his confession, provided that he was not a principal. Subsequently another suspect, Sheets, implicated the Appellant as a principal. The State then withdrew its grant of immunity and tried the Appellant as a principal. The issue on appeal was that the grant of immunity was illegally withdrawn because the Appellant's confession was illegally exploited to obtain his arrest. Although the South Carolina Supreme Court relied on State v. Funchess in its opinion in Plath, the Plath situation is squarely controlled by the holding of this Court in Michigan v. Tucker, 417 U.S. 433 (1974). Therefore, any references to Funchess in the Plath opinion is mere dicta and therefore has no precedential value.

It is abundantly clear that both the South Carolina Court of Appeals and the South Carolina Supreme Court have ignored the clear precedents of this Court established


in Brown v. Illinois, Dunaway v. New York, Taylor v. Alabama, all supra, although these cases were cited to the Court during oral argument and in the subsequent Petitions for Rehearing and Certiorari to the South Carolina Supreme Court.

We respectfully submit that this Petition for Certiorari should be granted in order to uphold the principles of federalism mandated by the supremacy clause and for this Court to insure compliance by the State of South Carolina with the decisions of this Court defining the protections contained in the Fourth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

The Writ should properly issue to review the judgment of the lower court.

Respectfully submitted,


STEPHEN P. WILLIAMS
Assistant Appellate Defender

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(803) 758-8601

ATTORNEY FOR PETITIONER.

August 15, 1985.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

NO. 85-_____

KENNETH DALE LANIER,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX

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ATTORNEY FOR PETITIONER.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

The State, Respondent,

v.

Kenneth Dale Lanier, Appellant.

Appeal From Aiken County
Frank McGowan, Jr., Judge

Memorandum Opinion No. 85-MO-003
Heard January 23, 1985 Filed February 14, 1985

AFFIRMED

Assistant Appellate Defender Stephen P. Williams, of
South Carolina Office of Appellate Defense, of
Columbia, for appellant.

Attorney General T. Travis Medlock and Assistant
Attorney General Harold M. Coombs, Jr., both of
Columbia, and Robert J. Harte, Solicitor of the
Second Judicial Circuit, of Aiken, for respondent.

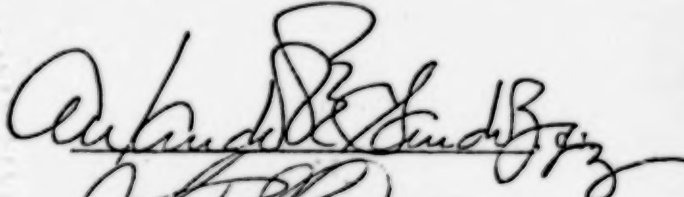
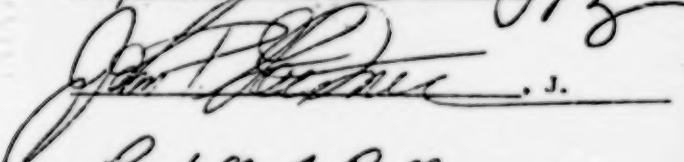

PER CURIAM: Kenneth Dale Lanier was indicted for armed robbery. After trial by jury he was convicted and sentenced to twenty years imprisonment. Lanier appeals his conviction alleging that the trial court erred in admitting his confession into evidence because it was the product of an illegal arrest. We affirm.

The sole issue on appeal is whether Lanier's confession to participation in the armed robbery was admissible into evidence. The trial judge found that Lanier was properly advised of his rights prior to questioning and that the confession was voluntary. Lanier does not except to these findings. Rather he argues that his arrest was illegal under Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), because he was arrested at the front door of his house without an arrest warrant.

STATE v. LANIER

Assuming, without deciding, that Lanier's arrest was illegal, we nevertheless hold his confession was admissible. A confession made while the accused is in custody before any warrant for his arrest has been issued is not per se inadmissible. State v. Funchess, 255 S.C. 385, 179 S.E.2d 25, cert. denied, 404 U.S. 915, 92 S.Ct. 236, 30 L.Ed. 2d 189 (1971). Voluntariness remains as the test of admissibility. Id. Even if the arrest was illegal, the confession will be admissible if it is freely and voluntarily given. State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). Since Lanier does not claim his confession was not voluntary, his argument that the confession was inadmissible is without merit.

AFFIRMED.



The South Carolina Court of Appeals

REBA D. NIMS
CLERK

April 5, 1985

P.O. BOX 11629
COLUMBIA, S.C. 29211

Stephen P. Williams, Esquire
Assistant Appellate Defender
S. C. Office of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, S. C. 29201

Re: The State v. Kenneth Dale Lanier

Dear Mr. Williams:

The Court has today returned your Petition for Rehearing with the following Order endorsed thereon:

"Petition denied.

s/ Alexander M. Sanders, Jr., C. J.

s/ John P. Gardner, J.

s/ Randall T. Bell, J.

April 5, 1985

Columbia, South Carolina."

The remittitur is being forwarded to the Clerk of Court of Aiken County today.

Very truly yours,

Reba D. Nims
Reba D. Nims
Clerk

RDM/irc

cc: The Honorable Harold M. Coombs, Jr.
The Honorable Robert J. Harte, Solicitor

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APR 8 1985

S. C. COMMISSION ON
APPELLATE DEFENSE

The Supreme Court of South Carolina

The State,

Respondent,

v.

Kenneth Dale Lanier,

Petitioner,

ORDER

Petitioner requests the Court to issue a writ of certiorari to review the decision of the Court of Appeals in State v. Lanier, 85 MO-003 (S.C. App., filed February 14, 1985). After careful consideration of the petition, we are of the opinion it should be denied.

[Signature]
FOR THE COURT

Columbia, South Carolina

June 27, 1985

CERTIFIED TRUE COPY:

Brenda J. Shady
Deputy Clerk, S. C. Supreme Court

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JUL 01 1985

S. C. COMMISSION ON
APPELLATE DEFENSE